

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

THE PUBLIC SCHOOL RETIREMENT SYSTEM OF MISSOURI,

Respondent,

v.

SCOTT TAVEAU,

Appellant.

DOCKET NUMBER WD77443

Date: September 22, 2015

Appeal from:
Cole County Circuit Court
The Honorable Daniel R. Green, Judge

Appellate Judges:
Division Four: Alok Ahuja, C.J., P.J., Gary D. Witt, J. and Kathleen A. Forsyth, Sp. J.

Attorneys:
Allen D. Allred, Lawrence C. Friedman, St. Louis, for Respondent
Roger G. Brown, Jefferson City, MO for appellant

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

THE PUBLIC SCHOOL RETIREMENT SYSTEM OF MISSOURI

v.

SCOTT TAVEAU,

WD77443

Respondent,

Appellant.

Cole County

Appellant Scott Taveau served as Superintendent of the Liberty Public School District from July 1, 1999, until June 30, 2007. Taveau entered an employment contract with the School District in 2004. As subsequently amended, the 2004 agreement permitted Taveau to “retire” from the District effective December 31, 2005, but to continue to serve as Superintendent of the District from January 1, 2006, through June 30, 2007, under the limitations contained in § 169.560, RSMo. That statute provides that a school district retiree may continue to work for a school district, while simultaneously receiving retirement benefits from the Public School Retirement System, so long as the retiree actually retires from full-time employment, and during any school year works no more than 550 hours, and receives no more than 50% of the compensation for the position the retiree occupies.

In November 2005, Taveau notified the Retirement System of his impending “retirement” as of December 31, 2005, and the Retirement System subsequently began paying Taveau his retirement benefits.

In 2006, the Retirement System received information indicating that Taveau had continued to work full-time following his purported retirement on December 31, 2005. After extensive correspondence with Taveau and the School District, the Retirement System determined in July 2008 that Taveau was not, in fact, entitled to collect retirement benefits during the period from January 1, 2006 through June 30, 2007. Pursuant to this determination, the Retirement System withheld retirement benefit payments from July 2008 forward, to recover the sums improperly paid, along with eight percent interest. The total amount of the overpayment found by the Retirement System, exclusive of interest, was \$ 212,471.46.

The Retirement System filed a declaratory judgment petition against Taveau, seeking a declaration that he was not entitled to receive retirement benefits for the period from January 1, 2006 through June 30, 2007. Taveau filed a counterclaim alleging that the Retirement System’s withholding of his retirement benefits to recoup payments previously made to him was unlawful.

Following a twelve-day bench trial, the circuit court found that “[t]he overwhelming evidence in the record is that Taveau did not actually retire from Liberty on December 31, 2005, and there is no credible evidence that Taveau did actually retire[] from Liberty at any point prior to June 30, 2007.” Because he had not actually retired, the court concluded that Taveau was not entitled to receive retirement benefits from January 1, 2006 through June 30, 2007, and that the Retirement System was justified in recouping the benefits paid during that period. The court found against Taveau on his affirmative claims.

Taveau appeals.

AFFIRMED.

Division Four holds:

Taveau first argues that the trial court “erred and misapplied the law” by concluding that he did not actually retire on December 31, 2005. Our decision in a prior appeal makes clear that the issue of whether Taveau actually retired from full-time employment on December 31, 2005, was a *factual* question, not a legal issue, which the circuit court was required to resolve after considering all of the circumstances surrounding Taveau’s post-December 2005 employment. The terms of Taveau’s contract with the School District were not controlling concerning his employment status. Moreover, substantial evidence supports the circuit court’s determination that Taveau did not, in fact, retire on December 31, 2005, but that he instead continued to serve as Superintendent on a full-time basis.

Taveau next contends that his right to due process of law was violated, because his retirement benefits were taken without affording him a pre-deprivation hearing. Taveau’s briefing assumes that a “pre-deprivation hearing” must be conducted in-person, and that *no* pre-deprivation hearing was provided to him in this case. Taveau’s assumption is inaccurate. The pre-deprivation opportunity to present a party’s position *in writing* may be sufficient to satisfy due process principles. Here, the Retirement System sent several letters to Taveau and to the School District, over a roughly two-year period, explaining the Retirement System’s concerns, and requesting specific information to address those concerns. Taveau was not denied a pre-deprivation hearing.

Taveau argues detrimental reliance, and breach of fiduciary duty. The Retirement System has no fiduciary duty to pay retirement benefits to persons who are not entitled to those benefits under the governing statutes. Moreover, Taveau was aware of the nature of his post-December 31, 2005 employment with the District; he could not have reasonably relied on the Retirement System’s actions, when he was aware of the circumstances which defeated his eligibility for retirement benefits.

In his final Point, Taveau claims that the circuit court erroneously considered evidence of a dismissed criminal indictment against him, and his later guilty plea which resulted in a suspended imposition of sentence. Taveau has waived any objection to the circuit court’s consideration of this evidence, because evidence concerning the criminal charges was first admitted into evidence during Taveau’s direct examination by his own counsel. In any event, the circuit court’s judgment indicates that it considered this evidence as relevant only for a limited

purpose, and Taveau has failed to demonstrate that he suffered any prejudice from the circuit court's limited consideration of that evidence, even if we assume that the evidence was erroneously admitted.

Before: Division Four: Alok Ahuja, C.J., P.J., Gary D. Witt, J. and Kathleen A. Forsyth, Sp. J.

Opinion by: Alok Ahuja, Judge

September 22, 2015

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